

OPEN MEETING ITEM



0000031382

COMMISSIONERS
JEFF HATCH-MILLER - Chairman
WILLIAM A. MUNDELL
MARC SPITZER
MIKE GLEASON
KRISTIN K. MAYES

ORIGINAL



ARIZONA CORPORATION COMMISSION

22

DATE: September 27, 2005

DOCKET NO: W-02113A-05-0178

TO ALL PARTIES:

Enclosed please find the recommendation of Assistant Chief Administrative Law Judge Dwight D. Nodes. The recommendation has been filed in the form of an Opinion and Order on:

CHAPARRAL CITY WATER COMPANY
(CC&N EXTENSION/ORDER PRELIMINARY)

Pursuant to A.A.C. R14-3-110(B), you may file exceptions to the recommendation of the Administrative Law Judge by filing an original and thirteen (13) copies of the exceptions with the Commission's Docket Control at the address listed below by 4:00 p.m. on or before:

OCTOBER 6, 2005

The enclosed is NOT an order of the Commission, but a recommendation of the Administrative Law Judge to the Commissioners. Consideration of this matter has tentatively been scheduled for the Open Meeting to be held on:

OCTOBER 18 AND 19, 2005

For more information, you may contact Docket Control at (602)542-3477 or the Hearing Division at (602)542-4250. For information about the Open Meeting, contact the Executive Director's Office at (602) 542-3931

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BRIAN C. McNEIL
EXECUTIVE DIRECTOR

1 **BEFORE THE ARIZONA CORPORATION COMMISSION**

2 **COMMISSIONERS**

3 JEFF HATCH-MILLER, Chairman
4 WILLIAM A. MUNDELL
5 MARC SPITZER
6 MIKE GLEASON
7 KRISTIN K. MAYES

8 IN THE MATTER OF THE APPLICATION OF
9 CHAPARRAL CITY WATER COMPANY, INC.,
10 AN ARIZONA CORPORATION, FOR AN
11 EXTENSION OF ITS CERTIFICATE OF
12 CONVENIENCE AND NECESSITY, AND FOR
13 AN ORDER PRELIMINARY PURSUANT TO
14 A.R.S. § 40-282.D.

DOCKET NO. W-02113A-05-0178

DECISION NO. _____

OPINION AND ORDER GRANTING
"ORDER PRELIMINARY"

10 DATE OF HEARING: August 16, 2005

11 PLACE OF HEARING: Phoenix, Arizona

12 ADMINISTRATIVE LAW JUDGE: Dwight D. Nodes

13 APPEARANCES: Mr. Jay L. Shapiro, FENNEMORE CRAIG, on
14 behalf of Applicant; and

15 Mr. David Ronald, Staff Attorney, Legal
16 Division, on behalf of the Utilities Division of
the Arizona Corporation Commission.

17 **BY THE COMMISSION:**

18 On March 10, 2005, Chaparral City Water Company ("Chaparral City" or "Company") filed
19 with the Arizona Corporation Commission ("Commission") an application for an extension of its
20 Certificate of Convenience and Necessity ("CC&N"), and for an "order preliminary" pursuant to
21 A.R.S. § 40-282.D, the terms of which would allow Chaparral City to extend its CC&N to include
22 approximately 1,300 acres of state trust land located north of the Town of Fountain Hills and
23 immediately adjacent to Chaparral City's existing CC&N area (Ex. A-1).

24 On April 4, 2005, the Commission's Utilities Division Staff ("Staff") and Chaparral City filed
25 a Joint Request for Procedural Schedule setting forth a proposed schedule for the conduct of this
26 proceeding.

27 By Procedural Order issued April 13, 2005, a hearing was scheduled for August 16, 2005, and
28 other procedural timelines were established, including a July 1, 2005 deadline for filing of a Staff

1 Report. The Procedural Order also directed the Company to publish notice of the Application and
2 mail notice to all affected property owners in the CC&N extension area.

3 On May 12, 2005, Chaparral City filed a Certification of Publication and Proof of Mailing
4 attesting to the Company's compliance with the notice requirements (Ex. A-2).

5 On June 28, 2005, Staff filed a Request for Extension of Time, until July 8, 2005, to file the
6 Staff Report. The Company did not oppose Staff's request.

7 On June 29, 2005, a Procedural Order was issued granting Staff's extension request and
8 extending Chaparral City's filing deadline for objections to the Staff Report.

9 On July 8, 2005, Staff filed its Staff Report recommending approval of the Company's
10 application subject to certain conditions. The Company agreed with the conditions recommended by
11 Staff and did not file objections to the Staff Report.

12 The hearing was held as scheduled on August 16, 2005 before a duly authorized
13 Administrative Law Judge of the Commission. Chaparral City and Staff appeared and were
14 represented by counsel. At the conclusion of the hearing, the matter was taken under advisement
15 pending issuance of a Recommended Opinion and Order.

16 * * * * *

17 Having considered the entire record herein and being fully advised in the premises, the
18 Commission finds, concludes, and orders that:

19 **FINDINGS OF FACT**

20 1. Chaparral City is an Arizona corporation engaged in providing water utility services in
21 eastern Maricopa County, Arizona, including the Town of Fountain Hills and a small portion of the
22 City of Scottsdale. The Company currently serves approximately 12,700 customers including
23 residential, commercial and irrigation customers.

24 2. Chaparral City's original permanent CC&N was granted by Decision No. 41243 (April
25 20, 1971). The Company's CC&N was extended by Decision No. 63201 (November 30, 2000).

26 3. Chaparral City is a wholly owned subsidiary of American States Water Company
27 ("American States"). American States is a holding company which owns Chaparral City and three
28 other utility subsidiaries: Southern California Water Company; American States Utility Services, Inc.;

1 and Bear Valley Electric Company (Ex. S-1, at 1).

2 4. By its application in this docket, Chaparral City is seeking authority to extend its
3 service territory to include approximately 1,313 acres of land owned by the State of Arizona and
4 administered by the Arizona State Land Department ("ASLD"). Only 35 acres of the ASLD land is
5 currently developed (for the Fountain Hills Middle School site) and is currently being served by
6 Chaparral City. The proposed extension area would add approximately two square miles to the
7 Company's existing 19 square mile CC&N area (*Id.* at 2).

8 5. According to the application, Fountain Hills and Maricopa County have expressed
9 interest in annexing the extension area after it is sold¹, and the ASLD has begun the process of
10 preparing the property for sale at auction². The Staff Report states that letters submitted by the ASLD
11 and Fountain Hills indicate that the sale of the property would be facilitated by approval of the
12 proposed CC&N extension (*Id.*).

13 6. Chaparral City's existing water system consists of a Central Arizona Project ("CAP")
14 water treatment plant that can process 18 million gallons of water per day; two wells capable of
15 producing 2,400 gallons per minute; eight storage tanks with a total capacity of 10.3 million gallons;
16 six booster stations; and a distribution system with four pressure zones. Based on historical growth
17 rates, the Company's customer base is expected to grow from 12,700 customers currently to
18 approximately 15,800 customers at the end of 2008. Staff indicated that Chaparral City currently has
19 sufficient source and storage capacity to serve up to 18,000 customers (Ex. S-1, at 2).

20 7. Staff stated that the Company has no outstanding compliance issues with the
21 Commission's Compliance Section (*Id.*).

22 8. Maricopa County Environmental Services Division ("MCESD") reported that
23 Chaparral City's system, PWS No. 07-017, has no major deficiencies. MCESD has determined that

24 ¹ During public comment at the hearing, Fountain Hills' Town Manager, Tim Pickering, stated that the Town considers
25 annexation of the state trust land a priority and availability of water service to the area is a necessary first step in that
process (Tr. 5-6).

26 ² Public comment in support of the CC&N extension was also offered by ASLD Commissioner Mark Winkelman. Mr.
27 Winkelman stated that the state trust land that is the subject of the CC&N extension request in this docket is in
28 preliminary stages of preparation for auction. He indicated that ASLD is desirous of having the water utility provider in
place prior to auction to maximize the opportunity for sale of the property. A stand-alone wastewater district is expected
to provide sewer service to the property and electric service would be provided by Arizona Public Service Company (Tr.
7-13).

1 the Company's system is currently delivering water that meets water quality standards required under
2 Arizona Administrative Code, Title 18, Chapter 4 (*Id.*).

3 9. Given the current unknown nature of development for the state trust land property, the
4 specific configuration of the Company's system for the area is not known. As a result, the Company
5 is unable, at this time, to submit an application for a Certificate of Approval to Construct ("ATC") for
6 expansion into the area (*Id.* at 3).

7 10. Chaparral City's service area is located within the Phoenix Active Management Area
8 ("AMA") and a developer in the extension area would therefore be required by the Arizona
9 Department of Water Resources ("ADWR") to demonstrate a 100-year assured water supply prior to
10 recording plats or selling parcels. A developer may prove a 100-year supply by satisfying the ADWR
11 requirements for a Certificate of Assured Water Supply, or by a written commitment of service from
12 a provider with a Designation of Assured Water Supply ("Designation") for its existing service area.
13 Chaparral City holds a Designation for its existing CC&N area and Staff expects that the Company
14 will seek to amend its Designation to include the extension area (*Id.*).

15 11. The U.S. Environmental Protection Agency has reduced the maximum contaminant
16 level ("MCL") for arsenic in drinking water from 50 parts per billion ("ppb") to 10 ppb, effective
17 January 23, 2006. According to Staff, Chaparral City reported that its CAP water source has an
18 average arsenic content of only 2 ppb, but the Company's two well sources have arsenic levels of 12
19 ppb and 13 ppb. Staff indicates that the Company plans to blend its well sources with CAP water in
20 order to meet the new arsenic MCL requirements (*Id.*).

21 12. Staff points out that a Curtailment Plan Tariff is an effective tool to enable a water
22 company to manage its resources during periods of shortages due to pump breakdowns, droughts or
23 other unforeseen events. Chaparral City submitted a Curtailment Plan Tariff in its pending rate case
24 (Docket No. W-02113A-04-0616).

25 13. Based on its analysis of the Company's application and associated documents and
26 exhibits, Staff recommended approval of Chaparral City's application subject to the following
27 conditions:
28

- 1) Pursuant to A.R.S. § 40-282(D), the Commission's issuance of an "Order Preliminary" to the issuance of a "Final Order" granting the ultimate CC&N extension for the state trust land identified in the application;
- 2) Chaparral City be directed not to construct any water distribution mains within the CC&N extension area identified in this docket, nor provide any water services within the proposed extension area, until the Commission issues a "Final Order" in this docket approving the ultimate CC&N for the extension area;
- 3) Chaparral City be required to demonstrate to the satisfaction of the Commission's Director of Utilities that the Company is able to meet the water production needs for its system, PWS No. 07-017, for both its current customer base as well as expected demand for the proposed extension area. Sufficient capacity may be demonstrated by filing with Docket Control a list of pending or future water sources, their anticipated production capacity in gallons per minute, and a time schedule for ADEQ approval of construction and operation;
- 4) Chaparral City be required to update or amend its Designation of Assured Water Supply to include the service area sought by the CC&N extension request. The Company must file with Docket Control under the above-captioned docket number, the amended Designation, stating that there is adequate water supply, where applicable or required by law;
- 5) Chaparral City be required to file with Docket Control the projected number of customers to be served at build out in the extension area;
- 6) Chaparral City be required to file with Docket Control the projected cost of utility facilities for the proposed extension area;
- 7) Chaparral City be required to file with Docket Control copies of each ADEQ and/or MCESD "Approval to Construct" for the requested extension area prior to providing service from the facilities covered by each Approval to Construct;
- 8) Chaparral City be required to file with Docket Control a copy of the amended Maricopa County and/or Town of Fountain Hills franchise agreement in accordance with the application in this proceeding; and
- 9) Chaparral City be required to comply with items 3, 4, 5, 6, 7, and 8 within three (3) years of the effective date of the "Order Preliminary" issued in this proceeding. If the Company complies with the designated items within the three-year timeframe, it should be required to file a Motion within the three-year period seeking a "Final Order" for approval of the CC&N extension area. If Chaparral City fails to meet the three-year timeframe, it should be required to submit a new CC&N extension application in order to serve the area requested by its application in this proceeding and to file proof of such submission in this docket for compliance purposes (*Id.* at 4-5).

1 **Discussion and Resolution**

2 14. As discussed above, Chaparral City has requested, and Staff has recommended, that
3 the Commission issue, pursuant to A.R.S. §40-282(D), an "Order Preliminary" to the issuance of the
4 ultimate CC&N to Chaparral City. A.R.S. §40-282(D) provides:

5 If a public service corporation desires to exercise a right or privilege under
6 a franchise or permit which it contemplates securing, but which has not
7 yet been granted to it, the corporation may apply to the commission for an
8 *order preliminary* to the issue of the certificate. The commission may
9 make an order declaring that it will thereafter, upon application, under
10 rules it prescribes, issue the desired certificate, upon terms and conditions
11 it designates, after the corporation has obtained the contemplated franchise
12 or permit or may make an order issuing a certificate on the condition that
the contemplated franchise or permit is obtained and on other terms and
conditions it designates. If the commission makes an order preliminary to
the issuance of the certificate, upon presentation to the commission of
evidence that the franchise or permit has been secured by the corporation,
the commission shall issue the certificate. (emphasis added)

13 15. Chaparral City seeks an Order Preliminary from the Commission in order to proceed
14 with its plans to serve the state trust land that is in the process of preparation for sale at auction by the
15 ASLD. Under the Chaparral City and Staff proposal, the requested Order Preliminary would impose
16 certain requirements on the Company that must be satisfied prior to issuance of a subsequent "Final
17 Order" by the Commission formally granting the requested CC&N extension to Chaparral City.

18 16. In a recent Decision, we pointed out that although A.R.S. §40-282(D) permits the
19 issuance of an Order Preliminary, the process apparently has not been used on a regular basis for a
20 number of years. *See, Utility Source, LLC*, Decision No. 67446 (January 4, 2005).

21 17. There are circumstances where issuance of an Order Preliminary makes sense, such as
22 instances where a number of issues remain unresolved and subject to future events outside of the
23 Applicant's control, through no fault of the Applicant, and where there is a need to provide a degree
24 of certainty as to whether a given Applicant should be granted approval subject to the occurrence of
25 anticipated events. In a prior docket involving the acquisition by Johnson Utilities Company of a
26 defunct wastewater company's assets through the Bankruptcy Court, unique circumstances were
27 found to exist which justified the issuance of an Order Preliminary. Decision No. 67586 (February
28

1 15, 2005).

2 18. We believe that this proceeding also presents a unique set of facts that warrants the
3 issuance of an Order Preliminary, given the number of unresolved issues related to future
4 development of the state trust land. Granting an Order Preliminary will enable Chaparral City to
5 move forward with its preliminary plans for serving the proposed extension area, and will enable the
6 ASLD to have additional certainty regarding the provision of water utility service prior to making the
7 property available for sale. As such, preliminary approval will enhance the ability of the ASLD to
8 maximize the price obtained for the land, thereby providing a benefit to the State. Granting the
9 Order Preliminary in this case will also allow Chaparral City to wait until the developer's plans are
10 known before installing facilities necessary to serve the extension area and to secure other necessary
11 regulatory approvals. In addition, issuance of the Order Preliminary will enable the Commission to
12 maintain oversight of the process to ensure that all requirements have been met prior to granting final
13 approval of the CC&N extension. Once Staff has determined Chaparral City's compliance with the
14 conditions discussed herein, we will have a further opportunity to review Staff's recommendation and
15 issue a Final Order in this proceeding.

16 **CONCLUSIONS OF LAW**

17 1. Chaparral City is a public service company within the meaning of Article XV of the
18 Arizona Constitution and A.R.S. §§40-281, 40-282 and 40-285.

19 2. The Commission has jurisdiction over Chaparral City, and the subject matter of the
20 application.

21 3. Notice of the application was given in the manner described herein.

22 4. Pursuant to A.R.S. §40-282(D), it is appropriate under the unique facts and
23 circumstances of this case to issue an Order Preliminary.

24 5. In accordance with the Order Preliminary issued pursuant to A.R.S. §40-282(D),
25 Chaparral City shall be required to comply with all conditions set forth in the Staff recommendations
26 described above.

27 ...

28 ...

ORDER

IT IS THEREFORE ORDERED that, pursuant to A.R.S. §40-282(D), an Order Preliminary is hereby issued to Chaparral City Water Company, Inc., for extension of its CC&N for the area more fully described in Exhibit A attached hereto.

IT IS FURTHER ORDERED that, prior to issuance of a Final Order in this docket, Chaparral City Water Company, Inc. must comply with Staff's recommendations, as described herein.

IT IS FURTHER ORDERED that, prior to issuance of a Final Order, Chaparral City Water Company, Inc. shall be required to demonstrate to the satisfaction of the Commission's Director of Utilities that the Company is able to meet the water production needs for its system, PWS No. 07-017, for both its current customer base as well as expected demand for the proposed extension area. Sufficient capacity may be demonstrated by filing with Docket Control a list of pending or future water sources, their anticipated production capacity in gallons per minute, and a time schedule for ADEQ approval of construction and operation.

IT IS FURTHER ORDERED that, prior to issuance of a Final Order, Chaparral City Water Company, Inc. shall be required to update or amend its Designation of Assured Water Supply to include the service area sought by the CC&N extension request. The Company must file with Docket Control under the above-captioned docket number, the amended Designation, stating that there is adequate water supply, where applicable or required by law.

IT IS FURTHER ORDERED that, prior to issuance of a Final Order, Chaparral City Water Company, Inc. shall be required to file with Docket Control the projected number of customers to be served at build out in the extension area.

IT IS FURTHER ORDERED that prior to issuance of a Final Order, Chaparral City Water Company, Inc. shall be required to file with Docket Control the projected cost of utility facilities for the proposed extension area.

IT IS FURTHER ORDERED that prior to issuance of a Final Order, Chaparral City Water Company, Inc. shall be required to file with Docket Control a copy of the amended Maricopa County and/or Town of Fountain Hills franchise agreement in accordance with the application in this proceeding.

1 IT IS FURTHER ORDERED that prior to issuance of a Final Order, Chaparral City Water
2 Company, Inc. shall be required to comply with items 3, 4, 5, 6, 7, and 8 of Staff's recommendations,
3 as more fully described herein in Finding of Fact No. 13, within three (3) years of the effective date
4 of the "Order Preliminary" issued in this proceeding. If the Company complies with the designated
5 items within the three-year timeframe, it shall file a Motion in the above-captioned docket, within the
6 three-year period, seeking a "Final Order" for approval of the CC&N extension area. If Chaparral
7 City fails to meet the three-year timeframe, it shall submit a new CC&N extension application in
8 order to serve the area requested by its application in this proceeding and to file proof of such
9 submission in this docket for compliance purposes.

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IT IS FURTHER ORDERED that, upon issuance of a Final Order granting a CC&N for the proposed extension area Chaparral City Water Company, Inc. shall provide water utility services in the extension area under its existing tariffed rates and charges.

IT IS FURTHER ORDERED that this Decision shall become effective immediately.

BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

CHAIRMAN

COMMISSIONER

COMMISSIONER

COMMISSIONER

COMMISSIONER

IN WITNESS WHEREOF, I, BRIAN C. McNEIL, Executive Director of the Arizona Corporation Commission, have hereunto set my hand and caused the official seal of the Commission to be affixed at the Capitol, in the City of Phoenix, this ____ day of _____, 2005.

BRIAN C. McNEIL
EXECUTIVE DIRECTOR

DISSENT _____

DISSENT _____

1 SERVICE LIST FOR:

CHAPARRAL CITY WATER COMPANY, INC.

2 DOCKET NO.:

W-02113A-05-0178

3 Jay L. Shapiro

Norman D. James

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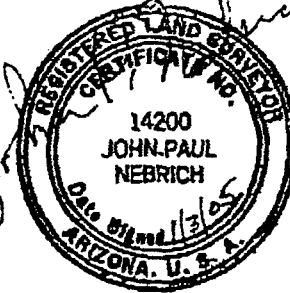
**ARIZONA STATE LAND DEPARTMENT
LEGAL DESCRIPTION FORM**

SUBMITTED TO:

REFERENCE:

FOUNTAIN HILLS

THIS IS TO CERTIFY THAT THIS
LEGAL DESCRIPTION WAS
PREPARED UNDER MY DIRECTION.



THE ENGINEERING AND MAPPING SECTION HEREBY SUBMITS
THE LEGAL DESCRIPTION OF LANDS REQUIRED
AND LOCATED IN:

SEC. 1, 2, 3 TWP. 3N RGE 6E CO. MARICOPA

LEGAL DESCRIPTION:

GOVERNMENT LOTS 9, 10, AND 11, OF SECTION 1, AND GOVERNMENT LOTS 1 THRU 4, THE SOUTH HALF OF THE NORTH HALF, AND THE SOUTH HALF OF SECTION 2, AND GOVERNMENT LOTS 1 THRU 4, THE SOUTH HALF OF THE NORTH HALF, AND THE SOUTH HALF OF SECTION 3, TOWNSHIP 3 NORTH, RANGE 6 EAST, OF THE GILA AND SALT RIVER MERIDIAN, MARICOPA COUNTY, ARIZONA, MORE PARTICULARLY DESCRIBED AS FOLLOWS;

BEGINNING AT THE NORTHWEST CORNER OF SAID SECTION 1, ALSO BEING THE NORTHEAST CORNER OF SECTION 2,,

THENCE N90°00'E ALONG THE NORTH LINE OF SAID SECTION 1, A DISTANCE OF 657.36 FEET, TO THE NORTHEAST CORNER OF LOT 9,

THENCE S6°38'W, ALONG THE EAST LINE OF LOTS 9 AND 10, A DISTANCE OF 2208.36 FEET,

THENCE S6°36'W, ALONG THE EAST LINE OF LOTS 10 AND 11, A DISTANCE OF 2640.00 FEET,

THENCE S6°39'W, ALONG THE EAST LINE OF LOT 11, A DISTANCE OF 461.34 FEET, TO THE SOUTH LINE OF SECTION 1,

THENCE N90°00'W ALONG THE SOUTH LINE OF SAID SECTION 1, A DISTANCE OF 38.94 FEET, TO THE SOUTHWEST CORNER OF SECTION 1, ALSO BEING THE SOUTHEAST CORNER OF SECTION 2,

THENCE N89°51'W ALONG THE SOUTH LINE OF SAID SECTION 2; A DISTANCE OF 5257.56 FEET, TO THE SOUTHWEST CORNER OF SECTION 2, ALSO BEING THE SOUTHEAST CORNER OF SECTION 3,

THENCE N89°55'W ALONG THE SOUTH LINE OF SAID SECTION 3, A DISTANCE OF 5277.36 FEET, TO THE SOUTHWEST CORNER OF SECTION 3,

THENCE N00°15'W ALONG THE WEST LINE OF SAID SECTION 3, A DISTANCE OF 5208.72 FEET, TO THE NORTHWEST CORNER OF SECTION 3,

THENCE N89°48'E ALONG THE NORTH LINE OF SAID SECTION 3, A DISTANCE OF 5280.00 FEET, TO THE NORTHEAST CORNER OF SECTION 3, ALSO BEING THE NORTHWEST CORNER OF SECTION 2,

THENCE CONTINUING N89°48'E ALONG THE NORTH LINE OF SAID SECTION 2, A DISTANCE OF 5280.00 FEET, TO THE NORTHEAST CORNER OF SECTION 2, ALSO BEING THE NORTHWEST CORNER OF SECTION 1, AND THE POINT OF BEGINNING.

CONTAINING 1312.68 ACRES, MORE OR LESS

John P. Nebrich
SIGNATURE

1/3/05
DATE